

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

JAMES HERSHEY,

Plaintiff,

vs.

JIM SALMONSEN, AMBER  
GRAHAM, SALLY ODDEN,  
CARRIE WALSTEDT, JOHN/JANE  
DOES 1-3,

Defendants.

CV 22-39-H-BMM

ORDER

United States Magistrate Judge Kathleen DeSoto entered her Findings and Recommendations in this case on August 23, 2022. (Doc. 8.) Magistrate Judge DeSoto recommended that Plaintiff James Hershey’s Complaint (Doc. 2) be dismissed for failure to state a cognizable federal claim. (Doc. 8 at 4.)

Neither party filed objections to the Findings and Recommendations. The parties have waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United*

*States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Reviewing for clear error and finding none,

**IT IS ORDERED** that Magistrate Judge DeSoto's Findings and Recommendations (Doc. 8) are **ADOPTED IN FULL**.

It is further ordered that:

1. Hershey's Complaint (Doc. 2) is DISMISSED for failure to state a cognizable federal claim. Pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), Hershey's filing of this action counts as one strike against him.

2. The Clerk of Court is directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

3. The Clerk of Court is directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith.

DATED this 28th day of September, 2022.

A handwritten signature in blue ink, reading "Brian Morris".

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Brian Morris, Chief District Judge  
United States District Court